



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2011-0642; FRL-9671-9 ]**

**Approval and Promulgation of Air Quality Implementation Plans; Delaware; Amendments to the Control of Nitrogen Oxides Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision amends Delaware's regulation that establishes controls for nitrogen oxides (NO<sub>x</sub>) emissions from industrial boilers and process heaters at petroleum refineries. The revision is a NO<sub>x</sub> emission limit for the fluid catalytic cracking unit carbon monoxide (CO) boiler at the Delaware City Refinery to provide for a facility-wide NO<sub>x</sub> emission cap compliance alternative. EPA is approving this SIP revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Effective Date: This final rule is effective on [insert date 30 days from date of publication].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2011-0642**. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and

will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Asrah Khadr, (215) 814-2071, or by e-mail at [khadr.asrah@epa.gov](mailto:khadr.asrah@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On January 23, 2012 (77 FR 3211), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of amendments to Delaware's regulation which establishes controls for NO<sub>x</sub> emissions from industrial boilers and process heaters at petroleum refineries. The formal SIP revision was submitted by Delaware on April 27, 2011. Additional background information behind this SIP revision is discussed in detail in the NPR.

### **II. Summary of SIP Revision**

This SIP revision consists of providing a facility-wide emissions cap compliance alternative limit for the fluid catalytic cracking unit CO boiler at the Delaware City Refinery. This NO<sub>x</sub> emissions cap starts out at 2,225 tons per year (tpy) and gradually decreases to 1,650 tpy. Additional information regarding the details of the SIP revision is discussed in the NPR.

The rationale for EPA's proposed action is explained in the NPR and will not be restated here.

No public comments were received on the NPR.

### **III. Final Action**

EPA is approving the Delaware SIP revision to amend the regulation that establishes controls for NO<sub>x</sub> emissions from industrial boilers and process heaters at petroleum refineries. This regulation establishes a facility-wide NO<sub>x</sub> emission cap compliance alternative for the fluid catalytic cracking unit CO boiler at the Delaware City Refinery.

### **IV. Statutory and Executive Order Reviews**

#### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to amendments of Delaware's regulation regarding the control of NO<sub>x</sub> emissions from industrial boilers and process heaters at petroleum refineries may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 2, 2012

W. C. Early  
Acting Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart I-- Delaware

2. In § 52.420, the table in paragraph (c) is amended by revising the entry for Regulation 1142, section 2.0 to read as follows:

§ 52.420                      Identification of plan.

\*                      \*                      \*                      \*                      \*

(c) \* \* \*

EPA-Approved Regulations in the Delaware SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*                      *	*                      *	*                      *	*                      *	
1142	Specific Emission Control Requirements			
*                      *	*                      *	*                      *	*                      *	
Section 2.0	Control of NO <sub>x</sub> Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries	4/11/11	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	Addition of a NO <sub>x</sub> emissions cap compliance alternative for the Delaware City Refinery.
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\*                      \*                      \*                      \*

[FR Doc. 2012-11656 Filed 05/14/2012 at 8:45 am; Publication Date: 05/15/2012]